

98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 98-961
Part 2

FEDERAL POLYGRAPH LIMITATION AND ANTI-CENSORSHIP ACT OF 1984

SEPTEMBER 21, 1984.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H.R. 4681]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 4681) relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the bill as reported by the Committee on Post Office and Civil Service) are as follows:

Page 9, line 12, insert "(a)" before "Sections".

Page 9, line 20, insert "and assigned to," after "employed by,"

Page 9, line 24, strike out the quotation marks and the second period.

Page 9, after line 24, insert the following:

(b) Section 7362 of this title does not apply to the Department of Defense in the case of any individual employed by, or detailed to, the Department of Defense, any individual applying for a position in the Department of Defense, or any expert or consultant under contract with the Department of Defense—

(1) if the individual has access under a special access program to classified information that has been specifically designated by the Secretary of Defense for the purpose of this paragraph or is being considered for a position in which access to such information will be required;

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(2) if interim clearance of the individual for a special access program is required;

(3) if the individual is employed in or assigned to (or is being considered for employment in or assignment to) a position in the Defense Intelligence Agency specified by the Secretary of Defense for the purposes of this paragraph;

(4) in the case of an individual who is not a citizen of the United States, if a polygraph examination is necessary to assist in determining the initial eligibility of the individual for access to classified information or is necessary to ensure that continued access by the individual to classified information is clearly consistent with the national security;

(5) if a polygraph examination is necessary to assist in determining the suitability, reliability, or credibility of an individual who is used as, proposed for use as, or purports to be an agent, source, or operative in foreign intelligence or counterintelligence;

(6) if a polygraph examination is conducted at the request of an individual who is the subject of a criminal, counterintelligence, or personnel security investigation, as a means of exculpation with respect to allegations arising in the course of the investigation; and

(7) if a polygraph examination is necessary to resolve serious credible derogatory allegations developed in connection with a personnel security investigation of a Department of Defense civilian or contractor employee or a member of the Armed Forces, if the allegation cannot be resolved in any other manner and the consent of the individual who is to be given the polygraph examination is obtained.

EXPLANATION OF AMENDMENTS

The amendments of the Committee on Armed Services amend the bill as reported by the Committee on Post Office and Civil Service to provide a partial exemption for the Department of Defense from the prohibition in the administration of polygraph examinations. The amendments of the Committee on Armed Services would authorize the Department of Defense to administer polygraph examinations to applicants for employment, individuals employed by or detailed to the Department of Defense, or any expert or consultant under contract with the department in seven situations.

The committee amendment would authorize the Department of Defense to administer polygraph examinations in the following situation: (1) when individuals are being considered for a position, or already in a position, requiring access to classified information under a special access program that has been specifically designated by the Secretary of Defense; (2) when individuals require interim clearance for a special access program; (3) when individuals are employed or assigned to, or being considered for employment or assignment to, positions in the Defense Intelligence Agency specified by the Secretary of Defense; (4) when used to assist in determining

the initial or continued eligibility of individuals who are not citizens of the United States for access to classified information; (5) when used to assist in determining the suitability, reliability or credibility of individuals proposed for use, or used as, or who purport to be an agent, source or operative in foreign intelligence or counterintelligence; (6) when used as a means of exculpation with respect to allegations arising in the course of counterintelligence or personnel security investigation when requested by the subject; and (7) when used to resolve serious, credible derogatory developed in a personnel security investigation of a Department of Defense civilian or contractor employee, or a member of the armed forces, if the allegation cannot otherwise be resolved, and with the consent of the individual who is to be given the polygraph examination.

PURPOSE

The purpose of H.R. 4681, as stated in the report of the Committee on Post Office and Civil Service (Report 98-961, Part I), is "to restrict the use of polygraph examinations by agencies against employees to cases involving criminal conduct. These restrictions apply to all agencies except the Central Intelligence Agency and the National Security Agency."

H.R. 4681, as reported by the Committee on Post Office and Civil Service, would prevent the Department of Defense from utilizing the polygraph in ways it is currently being successfully employed, as well as precluding its use in ways being contemplated in a proposed revision of the department's polygraph policy, as contained in draft DOD Directive 5210.48. The Department of Defense is, and has been, using polygraph examination (1) to resolve derogatory information developed in personnel security field investigations which cannot be resolved any other way; (2) to ensure that intelligence agents acting on behalf of DOD intelligence components are bona fide; (3) for exculpatory purposes; and (4) for counterintelligence investigations when evidence of criminal conduct may not be present. In a proposed revision of its polygraph policy directive, the department would also authorize a limited polygraph examination (1) before granting an individual access to the most sensitive classified information held by the department; (2) to assist in determining an individual's eligibility for employment, assignment or detail to a position within the Defense Intelligence Agency that is designated as a critical intelligence position; and (3) to assist in determining the eligibility of individuals for interim access to very sensitive classified intelligence sources and methods of information. This expanded authority would be limited to situations where time does not allow conduct of the normal personnel security field investigation before placing the individual in the position.

The amendment proposed by the Committee on Armed Services would provide the Department of Defense with a limited exemption from the restrictive language of H.R. 4681. The amendment would permit the Department of Defense to continue to administer polygraph examinations to its military and civilian personnel and to contractor personnel in seven specific situations.

BACKGROUND

Certain information in the Federal government requires protection in the interest of maintaining the security and integrity of the nation. There are several categories of sensitivity in such information. Among the most sensitive are intelligence sources and methods, military operations planning and certain weapon research and development programs. The Department of Defense is deeply involved in each of those areas and is the largest user of the intelligence product of the Central Intelligence Agency and the National Security Agency. Consequently, the department must entrust many of its personnel, military, civilian and contractors, with extremely sensitive information.

Evaluation of personnel to determine their trustworthiness and reliability in the handling of this sensitive classified information has always been a problem. Traditionally, the department has relied principally on the personnel security field investigation. The effectiveness of the field investigation has been eroded, however, by several events in recent years, e.g., the Privacy Act of 1974, limitation on the accessibility of school records, and restrictions on access to law enforcement records.

Recent years have also seen a significant increase in espionage convictions of U.S. citizens, e.g., Christopher John Boyce, Andrew Dalton Lee, Christopher Michael Cooke, Joseph George Helmich and William Holden Bell. Those cases involved the compromise of information ranging from the most secret research and development material to top secret compartmented intelligence information. Each case also demonstrated the dedication of Soviet intelligence agencies to penetrating U.S. intelligence and defense establishments.

In an effort to deal with that situation, the Deputy Under Secretary of Defense for Policy, in 1981, established a panel of senior defense officials to review the department's personnel security program and to recommend improvements. To assist in counterintelligence activities, the panel recommended the administration of polygraph examinations to assist in determining the initial and continued eligibility of a limited number of individuals in positions requiring access to extremely sensitive classified information.

The panel recommended that the scope of the proposed polygraph examination be limited to questions designed to determine if the individual has (1) ever engaged in espionage or sabotage against the United States or known any one who has, (2) ever had any unauthorized contact with representatives of a foreign government, or (3) ever been approached to give or sell, or ever gave or sold, classified materials to unauthorized persons, or known anyone who has. The examination would not probe the life style of the individual, nor would there be questions concerning social preferences, credit situations, or similar areas of personal conduct.

During the past year, the Department of Defense developed and refined a proposed revision of its polygraph policy. The draft revision of DOD Directive 5210.48 would authorize a polygraph examination for counterintelligence purposes as a supplement to the personnel security field investigation, to deter and detect espionage. Under the proposal, no action could be taken on the basis of a per-

son's reaction, as reflected on the polygraph charts, unless additional investigation produced derogatory information concerning the individual which, in and of itself, required action. The proposal also provides that a refusal to submit to a polygraph examination could not be the basis for firing an employee. Any current employee who refuses to take an examination as a condition of obtaining access would either remain in the job or be placed in a position of equal grade pay within the department.

In developing the revised policy, the Department of Defense made every effort to limit the proposed use of the polygraph in terms of who might be subject to it, the kind of questions that might be asked and the effect on the individual. As the Department of Defense witness testified:

There has been some concern that the department intends to require polygraph examinations of all personnel cleared for sensitive compartmented information, referred to as SCI. I want to emphasize that is simply not the case. Rather, the proposed use would be limited to specifically designated classified information within special access programs. While some of the positions being considered for polygraph examinations would undoubtedly also require access to SCI, the point is that SCI access, per se, would not be the qualifying criterion—rather the position would have to require access to information designated by the component head and requiring special protection greater than otherwise required by the special access program concerned.

Because the categories of especially sensitive information have not yet been identified, the department has been unable to determine the exact number of persons who would be subject to polygraph examination under the revised policy. The department has estimated, however, that, even if the program were fully implemented, not more than 10,000 examinations would be administered in any given year.

For more than 30 years, the Central Intelligence Agency and the National Security Agency have utilized the polygraph as a personnel security-screening technique. All civilian applicants for employment at those agencies are required to submit to a polygraph examination as a part of the employment evaluation process. Currently, both agencies also conduct a periodic polygraph examinations of on-board employees, contract personnel and military personnel to determine their eligibility for continued access to sensitive compartmented information. Witnesses from both agencies testified that they regard the polygraph as the single most important personnel security tool they possess. For example, during the past 12 months, of approximately 2,000 applicants being considered for employment at NSA, the polygraph examination developed information that disqualified 719 from further consideration.

The witnesses from the Central Intelligence Agency and the National Security Agency questioned the anomaly of H.R. 4681, as reported by the Committee on Post Office and Civil Service, in totally exempting their agencies from its requirements, while failing to provide similar consideration for the Department of Defense. The

Central Intelligence Agency witness testified that, because the intelligence developed by this agency is disseminated so widely within the Department of Defense, the CIA procedures "can come to naught if the recipients of the information are not meeting the same standards from a security point of view as our population has met."

By granting exemptions to the Central Intelligence Agency and the National Security Agency, H.R. 4681, as reported, recognizes the necessity for polygraph examinations in the protection of highly classified intelligence information. Because Department of Defense personnel are entrusted with the same information, the committee is convinced that the department must possess the authority to take reasonable precautions, including polygraph examinations, to protect that information. Accordingly, the committee recommends that H.R. 4681 be amended to grant the Department of Defense a limited exemption from the prohibition on polygraph examinations. The limited exemption provided by the committee amendment specifies the seven situations in which the Department of Defense would be authorized to utilize polygraph examinations as an element in its personnel security program. This exemption is essential if the Department of Defense is to provide highly sensitive classified information with the same degree of security as provided by the Central Intelligence Agency and the National Security Agency.

DEPARTMENTAL VIEWS

The Department of Defense recommended that it be granted a limited exemption from the polygraph prohibition contained in H.R. 4681. In testimony before the Investigations Subcommittee, the department witness, Gen. Richard G. Stilwell, USA (Ret.), Deputy Under Secretary of Defense for Policy, testified:

We can spend billions of dollars on sophisticated military systems, communications systems or intelligence-gathering programs, only to have them rendered ineffective as a result of one person's treachery. We wonder, then, whether it is wise to foreclose, as H.R. 4681 would do, one available means of coping with this insidious threat. Of course, the polygraph is not a perfect tool, but we believe it can be used to supplement other security measures in a manner that protects the rights of federal employees while, at the same time, giving us indications of potential security problems in our most sensitive programs that we do not now have.

COMMITTEE POSITION

The Committee on Armed Services, on September 19, by unanimous consent, agreed to report the amendment to H.R. 4681, as amended.

FISCAL DATA

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the committee requested the Department

of Defense to estimate the impact that passage of the legislation, as amended, would have in the department's budget. The department's response is set forth hereafter.

ESTIMATES RELATED TO IMPLEMENTATION OF POLYGRAPH PROGRAM REQUIRING CONDUCT OF 3,000 MORE POLYGRAPH EXAMINATIONS THE FIRST YEAR AFTER IMPLEMENTATION DIRECTED, 7,000 THE SECOND YEAR AND 10,000 IN THE THIRD YEAR

	Examiners	Administrative personnel	Salaries, equipment, TDY, training/facilities
Army:			
1st year	5	3	\$445,000
2d year	6	3	630,000
3d year	7	2	616,000
Total	18	8	1,691,000
Navy:			
1st year	4		558,000
2d year	5		835,000
3d year	13		1,117,500
Total	22		2,510,500
Air Force:			
1st year	4	2	375,300
2d year	4	2	375,300
3d year	3	1	296,225
Total	11	5	1,046,825
DOD:			
1st year	13	5	¹ 1,488,300
2d year	15	5	1,840,300
3d year	23	3	2,029,725
Total	51	13	5,358,325

¹ Includes estimate of \$110,000 to expand U.S. Navy Polygraph School to accommodate 18 students per course rather than present 12 students per course.

Note.—NSA—No increase specifically related to implementation.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office, and submitted pursuant to section 403 of the Congressional Budget Act of 1947, is included hereafter.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1984.

Hon. MELVIN PRICE,
Chairman, Committee on Armed Services, U.S. House of Representatives,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984, as ordered reported by the House Committee on Armed Services, September 19, 1984. We estimate that enactment of this bill will not result in significant costs or savings to the federal government.

The bill forbids agencies to require polygraph examinations of their employees. However, agencies may request employees to voluntarily submit to a polygraph examination as part of an investigation into criminal misconduct. Also, agencies may not require employees or applicants to enter into prepublication review agreements. Employees of the Central Intelligence Agency and the National Security Agency are exempt from the provisions of this legislation. In addition, the bill exempts certain employees of the Department of Defense from the provision restricting polygraph examinations.

According to the General Accounting Office, approximately 11,000 polygraph examinations were conducted by the federal government in 1983, with about 8,000 (70 percent) of these examinations related to criminal or specific incident investigations. The majority of these polygraph examinations were given by the Department of Defense (about 10,500), which employs approximately 94 percent of federal polygraph operators. Because the majority of the polygraph examinations given last year were voluntary and were related to criminal or specific incident investigations, which the bill would still permit, enactment is not anticipated to produce significant savings to the federal government either through employment of fewer polygraph operators or fewer purchases of polygraph equipment. Similarly, the provisions in this legislation regarding prepublication review are not expected to produce significant costs or savings.

This legislation will not affect the budgets of state or local governments. If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

COMMITTEE COST ESTIMATE

The Congressional Budget Office cost estimate does not appear to have considered the effect of the committee amendment, while the Department of Defense estimate included a consideration of the committee amendment and has detailed the various costs of the first three years of implementation of the Department Polygraph Program. The committee believes that the department's estimate is more reliable.

INFLATION-IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee on Armed Services examined the possible inflationary impact of the legislation as amended by the committee. The committee believes that enactment of this legislation would have no inflationary impact on the national economy.

OVERSIGHT FINDINGS

With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report

from the Committee on Government Operations pertaining to this matter.

With reference to clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee finds and recommends that the legislation be enacted pursuant to its ongoing oversight and legislative responsibilities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of such portions of the amendment as fall within the jurisdiction of the committee.

For the information of the Members, the changes proposed by this committee to the amendment as proposed by the Committee on Post Office and Civil Service are shown as follows (existing law proposed to be omitted by the Committee on Post Office and Civil Service is printed in roman and enclosed in black brackets, new matter proposed by the Committee on Post Office and Civil Service is printed in italic, matter proposed to be omitted by the Committee on Armed Services is printed in italic and enclosed in black brackets, new matter proposed by the Committee on Armed Services is printed in boldface italic):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart F—Labor-Management and Employee Relations

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.

7301. Presidential regulations.

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SUBCHAPTER VI—POLYGRAPH EXAMINATION AND PREPUBLICATION REVIEW RESTRICTIONS

7361. Definitions

7362. Restrictions relating to polygraph examinations.

7363. Restrictions relating to prepublication review.

7364. Remedies.

7365. Exemptions.

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**SUBCHAPTER VI—POLYGRAPH EXAMINATIONS AND
PREPUBLICATION REVIEW RESTRICTIONS**

§ 7361. Definitions

For purposes of this subchapter—

(1) the term “agency” means—

- (A) an Executive agency;*
- (B) the United States Postal Service;*
- (C) the Postal Rate Commission;*
- (D) the Administrative Office of the United States Courts;*
- (E) the Library of Congress;*
- (F) the Government Printing Office;*
- (G) the Office of Technology Assessment;*
- (H) the Congressional Budget Office;*
- (I) the Office of the Architect of the Capitol; and*
- (J) the Botanic Garden;*

(2) the term “employee” means—

- (A) an individual employed by an agency;*
- (B) a Congressional employee (other than an individual under subparagraph (A)); and*
- (C) an expert or consultant who is under contract under section 3109 of this title with an agency, including, in the case of an organization performing services under such section, an individual involved in the performance of such services;*

(3) the term “classified information” means information—

- (A) specifically authorized under criteria established by statute or Executive order to be kept secret in the interest of national defense or foreign policy; and*
- (B) in fact properly classified pursuant to such statute or Executive order;*

(4) the term “polygraph examination” means an interview with an individual which involves the use of a device designed to permit the examiner to make an inference or a determination, by evaluation of measured physiological responses, concerning whether the individual has truthfully or deceptively responded to inquiries made in such interview;

(5) the term “action”, as used with respect to an employee or applicant for employment, means—

- (A) a personnel action under clauses (i) through (x) of section 2302(a)(2)(A) of this title;*
- (B) a decision concerning clearance for access to classified information; and*
- (C) a performance evaluation (other than under chapter 43 of this title);*

in the case of such employee or applicant; and

(6) the term “prepublication review” means submission of information to an agency for the purpose of permitting such agency to examine, alter, excise, or otherwise edit or censor such information before it is publicly disclosed, but does not include any such submission with respect to information which is to be disclosed by an employee in such employee’s official capacity.

§ 7362. Restrictions relating to polygraph examinations.

(a) An agency may not—

(1) require, threaten to require, or, except as provided in subsection (b), request any employee or applicant for employment to submit to a polygraph examination;

(2) take, or threaten to take, any action against an employee or applicant for employment—

(A) on the basis of that individual's refusal to submit to a polygraph examination; or

(B) on the basis of any inference or determination (referred to in section 7361(4) of this title) made from that individual's performance in the course of a polygraph examination; or

(3) fail to take, or threaten to fail to take, any action on behalf of an employee or applicant for employment—

(A) on the basis of that individual's refusal to submit to a polygraph examination; or

(B) on the basis of any inference or determination described in paragraph (2)(B).

(b)(1) An agency may request an employee, in writing, to submit voluntarily to a polygraph examination—

(A) if the examination is administered as part of a specific investigation into alleged criminal conduct—

(i) after the completion, by other means, of as thorough an investigation as circumstances reasonably permit; and

(ii) solely for the development of information essential to that investigation;

(B) if the individual is reasonably believed to have knowledge of the matter under investigation; and

(C) if the alleged criminal conduct constitutes an offense punishable by death or imprisonment for a term exceeding one year.

(2) A polygraph examination under this subsection may be administered only by an individual employed by, and under the direction of—

(A) the Central Intelligence Agency;

(B) the National Security Agency;

(C) the Federal Bureau of Investigation;

(D) the United States Secret Service;

(E) the Drug Enforcement Administration;

(F) the Bureau of Alcohol, Tobacco, and Firearms;

(G) the Postal Inspection Service, United States Postal Service;

(H) the Intelligence and Security Command, United States Army;

(I) the Criminal Investigation Command, United States Army;

(J) the Naval Investigative Service, Department of the Navy;

(K) the Office of Special Investigations, Department of the Air Force; or

(L) the Marine Corps.

§ 7363. Restrictions relating to prepublication review

An agency may not—

(1) request, require, or threaten to require, an employee or applicant for employment to enter into an agreement, any part of which requires prepublication review;

(2) take, or threaten to take, any action against an employee or applicant for employment on the basis of that individual's refusal to enter into such an agreement;

(3) take, or threaten to take, any action against an employee or applicant for employment on the basis of that individual's refusal to comply with any of the provisions of such an agreement which require prepublication review;

(4) fail to take, or threaten to fail to take, any action on behalf of an employee or applicant for employment on the basis of a refusal referred to in paragraph (2) or (3); or

(5) establish or enforce, or threaten to establish or enforce, any other requirement in order to compel prepublication review.

§ 7364. Remedies

(a)(1) Subject to paragraph (2) and subsection (b), any person aggrieved by a violation of section 7362 or 7363 of this title may bring a civil action against the United States for equitable or monetary relief, or both, in the district court of the United States for the district in which that person resides, for the District of Columbia, or, in the case of an employee or former employee, for the district in which that person was employed at the time the cause of action arose.

(2) A civil action under this subsection shall be forever barred unless commenced within two years after the cause of action arose. For purposes of this paragraph, a cause of action shall be deemed to have arisen on the date that the person aggrieved knew, or with reasonable diligence should have known, of the violation concerned.

(3) The court shall award reasonable costs of litigation, and may award reasonable attorney fees, to a prevailing plaintiff in an action brought under this subsection.

(b)(1) If a person aggrieved by a violation of section 7362 or 7363 of this title would also be entitled to initiate proceedings for remedial action under agency administrative procedures, such person may raise the matter under subsection (a) or under such administrative procedures, but not both.

(2) A person shall be deemed to have exercised the option under this subsection to raise a matter either under subsection (a) or under agency administrative procedures upon the timely commencement of an action by such person in accordance with the Federal Rules of Civil Procedure or the timely initiation of such administrative procedures by such person, as the case may be.

(3) For purposes of this subsection, the term "agency administrative procedures" means any formal process of review by an agency provided under statute, regulation, or Executive order, including judicial review of any determination made in the course of such process.

§ 7365. Exemptions

(a) Section 7362 and 7363 of this title do not apply—

(1) to the Central Intelligence Agency, in the case of any individual employed by, or detailed to, the Central Intelligence

Agency, any individual applying for a position in the Central Intelligence Agency, or any expert or consultant under contract with the Central Intelligence Agency; or

(2) to the National Security Agency, in the case of any individual employed by, and assigned to, or detailed to, the National Security Agency, any individual applying for a position in the National Security Agency, or any expert or consultant under contract with the National Security Agency.

(b) Section 7362 of this title does not apply to the Department of Defense in the case of any individual employed by, or detailed to, the Department of Defense, any individual applying for a position in the Department of Defense, or any expert or consultant under contract with the Department of Defense—

(1) if the individual has access under a special access program to classified information that has been specifically designated by the Secretary of Defense for the purposes of this paragraph or is being considered for a position in which access to such information will be required;

(2) if interim clearance of the individual for a special access program is required;

(3) if the individual is employed in or assigned to (or is being considered for employment in or assignment to) a position in the Defense Intelligence Agency specified by the Secretary of Defense for the purposes of this paragraph;

(4) in the case of an individual who is not a citizen of the United States, if a polygraph examination is necessary to assist in determining the initial eligibility of the individual for access to classified information or is necessary to ensure that continued access by the individual to classified information is clearly consistent with the national security;

(5) if a polygraph examination is necessary to assist in determining the suitability, reliability, or credibility of an individual who is used as, proposed for use as, or purports to be an agent, source, or operative in foreign intelligence or counterintelligence;

(6) if a polygraph examination is conducted at the request of an individual who is the subject of a criminal, counterintelligence, or personnel security investigation, as a means of exculpation with respect to allegations arising in the course of the investigation; and

(7) if a polygraph examination is necessary to resolve serious credible derogatory allegations developed in connection with a personnel security investigation of a Department of Defense civilian or contractor employee or a member of the Armed Forces, if the allegation cannot be resolved in any other manner and the consent of the individual who is to be given the polygraph examination is obtained.

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SUMMARY

PURPOSE

The purpose of the committee amendment to H.R. 4681, as amended, is to provide for the Department of Defense a limited exemption from the prohibition on the use of polygraph examinations.

BACKGROUND

Polygraph examinations have been used for more than 30 years by the Central Intelligence Agency and the National Security Agency in screening personnel for access to highly classified information. Because many Department of Defense personnel are entrusted with the same highly classified information, the department must be authorized to provide an equal degree of security for that information.

FISCAL DATA

The Department of Defense estimates that implementation of the amendment will result in expenditures of \$10,606,650. The committee concurs in this cost estimate.

DEPARTMENTAL POSITION

The Department of Defense supports a limited exemption from the prohibition on the use of polygraph examinations contained in the committee amendment to H.R. 4681, as amended.

COMMITTEE POSITION

The Committee on Armed Services, on September 19, 1984, by unanimous consent, agreed to report the amendment to H.R. 4681, as amended.

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